(Testimony of Frank Gartenberg.)

Q. Do you recall the storage at the plant of the Terminal Refrigerating Company of eggs that came both directly to the [1873] Terminal Refrigerating Company and those that came first to the National Ice and Cold Storage Company and were then transferred to the Terminal? Do you recall the manner in which they were stored?

A. Yes. At that time, that particular time, the market was on a down grade and I had shown some of those eggs to different buyers and was not successful in selling them. So I had only one alternative and that was to store them, which was—of course, the orders came from Mr. Moncharsh to store them.

Q. And how did the order come from Mr. Moncharsh?

A. I don't recall. Either by phone or teletype.

Q. And how were the eggs then stored at the plant of the Terminal Refrigerating Company?

A. I ordered a truck——

Mr. Faulkner: Your Honor, we have a general objection, because this apparently has something to do with the William S. Clark, I assume.

Mr. Pratt: Yes.

Mr. Faulkner: So the general objection will go without repeating it.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

(Question read.)

The Witness: A. I ordered the trucking company to pick up the eggs from the National, the

(Testimony of Frank Gartenberg.)

Large and the Medium eggs, and brought over to the Terminal where I stored other eggs [1874] from other cars; separated the Large from the Mediums and stored them in different lots, according to size. I stored the Large eggs in one lot and the Medium eggs in another lot. There were also some brown eggs, which I stored separately.

Q. As to the Medium eggs: do you recall under what lot number they were stored at the terminal?

A. I believe it was 3737.

Q. After these eggs were stored there at the Terminal Refrigerating Company, did you report that fact to the San Francisco Office of Nye & Nissen?

A. Yes sir. We used to make a report every night. Every night— every day we had an overnight—you call it an overnight report. Everything that was transacted—eggs came in or butter, whatever was sold, whatever was left on the inventory, and whatever was stored. Everything was reported on that report and was mailed every night to San Francisco.

Q. So that it appeared in this report every day what eggs were in storage?

A. That is right.

Q. Now, these particular eggs in Lot 3737, do you recall how many cases of eggs there were?

A. There were a hundred and five cases in a lot.

Q. Do you know the character of these eggs as to whether they were plain eggs or processed eggs?

Mr. Faulkner: We object to that, if the Court please, upon the ground that no foundation has

(Testimony of Frank Gartenberg.)

been laid, because the witness has never testified that he has ever seen the eggs. [1875]

Mr. Pratt: I have asked him if he knows.

The Court: If he knows he may answer. The objection will be overruled.

Mr. Faulkner: Your Honor, I submit that a foundation should be laid as to whether he had seen the eggs.

Mr. Pratt: I will withdraw the question.

Q. Did you examine these eggs?

A. Yes, sir.

Q. Were you able to determine by your examination of the eggs whether they were plain eggs or processed eggs? A. Yes sir.

Q. What were they.

A. They were plain eggs.

Q. How do you know?

A. I know. I candled them.

Q. You candled them? A. Yes sir.

Q. You examined them?

A. I examined them.

Q. Of those one hundred and five cases, how many did you candle and examine?

A. Well, being that they were out of two different cars, I must have looked at about five cases out of each car, those Medium eggs.

Q. Where was that done?

A. At the National Ice and at the Terminal.

The Court: It is now time for adjournment. The Jury may be excused.

(A recess was thereupon taken until 2:00 o'clock p.m.) [1876]

Afternoon Session, February 27, 1946, 2:00 p.m.

The Court: Waive the roll call, stipulating and agreeing all the jurors are present. You may proceed.

FRANK GARTENBURG,

recalled;

Direct Examination (resumed):

Mr. Pratt: Q. Mr. Gartenberg, to go back for a moment to the receipt of these two carloads of eggs, are you able to state where these eggs came from?

A. Well, as far as I can remember they came from Minnesota.

Q. From Minnesota?

A. I believe one car was from Johnson Produce Company. The other one was a mixed car; I don't recall the shipper's name.

Q. They both came from Minnesota?

A. They both came from Minnesota.

Q. Upon receiving these eggs, upon their arrival in Los Angeles you were saying, I think, at the time court adjourned for the noon recess, that you examined them; is that right?

A. Yes.

Q. Where did you examine these eggs?

A. One car was at the National and one at the Terminal. I inspected the eggs at the Terminal.

Q. At the Terminal? A. Yes.

Q. The eggs you examined at the Terminal Refrigerating Company were in a warehouse——

(Testimony of Frank Gartenberg.)

A. They have a candling room, all [1877] storage houses have a candling room for that purpose, for inspection; that is where I candled the eggs.

Q. Do you remember how many of the cases of eggs you examined in order to determine the character of the eggs at the terminal?

A. Generally we inspect about 10 percent of the eggs to determine the quality and condition of the eggs.

Q. Of these 105 cases which were ultimately placed in lot 3737, I believe you said that 25 of those cases were shipped to the Terminal originally, is that right?

A. That's right; they were out of another lot. 80 cases of Mediums were out of the car that was delivered to the National Ice & Cold Storage.

Q. Both of these shipments were shipped to Nye & Nissen, care of these several refrigerating companies, were they not? A. Yes.

Q. Then there were 25 of these cases that were shipped originally to the Terminal Warehouses, or Terminal Refrigerating Company?

A. 25 cases were in the car that was consigned to Terminal Refrigerating Company.

Q. Of those 25 cases, are you able to state how many you actually examined and candled?

A. I think I looked at five or six cases out of the Mediums.

Q. Out of which?

A. Out of those 25 cases of Mediums.

Q. That perhaps was 20 to 25 per cent of them?

(Testimony of Frank Gartenberg.)

A. Yes.

Q. In examining those eggs, you candled them?

A. Yes.

Q. How many eggs in each case did you candle?

A. We generally [1878] candle about half a case all the way down, then we determine the grade by doubling up the amount, figuring it as a full case.

Q. How did you open those cases?

A. With a hatchet.

Q. After you had candled the half of a case then you put the cover back? A. That's right.

Q. How did you do that?

A. By nailing up, nailing it back down. Some of those Eastern cases are cottonwood cases and they are easily opened and you can put them right back in the same holes.

Q. The same nail holes?

A. Tap them down and it looks like it is just nailed there.

Q. Are you able to state whether you put them back in the same nail holes in returning the covers to the cases that you examined there at the Terminal Refrigerating Company?

A. Well, I can't say whether I put them in the same nail holes, or not, but I nailed them back up when I got through looking at them.

Q. As far as those eggs are concerned, the ones you examined at the Terminal Refrigerating Company, what did you determine as to the quality of the eggs?

(Testimony of Frank Gartenberg.)

A. The quality was of a fair quality; they were a fresh egg, but they were slightly tremulous.

Q. What do you mean by that?

A. Tremulous is shown when the white weakens. In an egg it begins to be tremulous, when you move the egg you can see the white going one way or the other. It shows a weakness of the white.

Q. I think you have already stated that those were plain eggs [1879] and they had not been processed. A. That's right.

Q. As to the eggs—what is the name of the other company?

A. National Ice & Cold Storage Company.

Q. In candling those eggs, what was the result?

A. They were of the same quality. I proceeded with the same manner of inspection to determine the quality and condition.

Q. In reporting you have already stated that every day you made a report to Nye & Nissen at San Francisco of the eggs you had in storage.

A. That's right.

Q. In those reports did you report the quality of the eggs?

A. I don't remember if I did, but most of the time I reported what I found in these cars.

Q. When these eggs were stored, as you say, these 105 cases at the Terminal Refrigerating Company, did you report that to the company, whether or not these were plain or processed eggs?

A. That's right. I told the Terminal——

(Testimony of Frank Gartenberg.)

Mr. Faulkner: We object to this as hearsay as to the defendants.

The Court: He may state what he did, if anything.

Mr. Faulkner: Yes, what he said and what he did would be hearsay.

The Court: State as to whom.

Mr. Faulkner: Your Honor, the question was what he said——

The Court: Read the question.

(Question and answer read.) [1880]

The Court: He told whom?

The Witness: Whoever was in charge. I believe at that time of day there were several clerks there, either Mr. Mills or Delameter; they always had two or three clerks taking care of the entries. We would report to them the grade we were putting in there, and the type, whether processed or plain. That is the way they would put it on their records.

Mr. Faulkner: I renew the objection.

The Court: The question and the answer may stand. Exception.

Mr. Faulkner: Exception.

Mr. Pratt: Q. Of these 105 cases you reported to the Terminal Refrigerating Company what?

A. That they were plain Mediums.

Q. When was it you made the examination of the eggs at the Terminal?

A. At the time of arrival.

Q. When did you make the examination of the

(Testimony of Frank Gartenberg.)

eggs at the other refrigerating room, the National Ice & Cold Storage?

A. Also when the car arrived.

Q. Do you know when that was, the date?

A. I don't remember the date, but I know it was either late in January or early in February.

Q. When was it with reference to the time that the eggs actually went into storage as Lot 3737 at the Terminal Refrigerating Company?

A. I did not get that.

Q. How long previous to their actually going into the warehouse [1881] was it that you made this examination?

A. Well, I made the examination upon arrival, and I believe I stored those eggs a few days afterward, three or four days; I don't remember exactly when it was. It was right after that.

Q. After the eggs went into storage there at the Terminal Warehouse Company, Terminal Refrigerating Company, rather, did you see them again, any of these eggs, before they were ultimately removed from the company's warehouse?

A. Yes, I have.

Q. On how many occasions did you go to the room where they were stored?

A. Well, I believe either once or twice; I am not sure.

Q. For what purpose did you go?

A. I tried to sell them.

Q. With whom did you go?

A. Well, I don't remember who it was, but it

(Testimony of Frank Gartenberg.)

was a prospective customer, one of the dealers I offered to sell the eggs to.

Q. Did you show the eggs to this prospective customer, or customers? A. Yes.

Q. And what was done in that connection, how did you show the eggs?

A. We ordered a five-case sample——

Mr. Faulkner: Object to this as incompetent, irrelevant, and immaterial, and not within the issues in this case, and not binding upon the defendants.

The Court: Overruled.

Mr. Faulkner: Exception. [1882]

The Witness: We took a five-case sample brought in by the Terminal employees, they bring them down to this inspection room. That is where we showed them to the customer. The customer examines them and he either buys them if they are good, or if he don't want them, don't like them, he turns them down.

Mr. Pratt: Q. Were you able to sell them?

A. No, sir.

Q. When did you next hear anything about these eggs from the office at San Francisco?

A. It was sometime in October.

Q. How did you receive word?

A. Well, I don't remember whether it was by phone, teletype, or by letter, but I was ordered——

Q. Ordered by whom?

A. Mr. Moncharsh.

Q. Ordered to do what?

A. To ship 105 cases to San Francisco.

(Testimony of Frank Gartenberg.)

Q. I show you a paper, which is Exhibit 124; will you look at that yellow slip, please?

A. That is an order that Dora Weinstein wrote up for the 105 cases.

Q. Do you recognize the signature of Nye & Nissen, by D. Weinstein? A. That's right.

Q. That is the handwriting of Dora Weinstein?

A. Yes.

Q. By the way, previously to that, when you put these eggs in storage did the refrigerating company issue warehouse receipts or certificates?

A. Warehouse receipts that were issued by the various storage houses, I would always pick them up and mail them to San Francisco. [1883]

Q. You sent them to San Francisco?

A. Yes.

Q. Will you look at these two exhibits, 127 and 128, which appear to be carbon copies of a portion of the warehouse receipts, and I will ask you whether you can recollect the warehouse receipts were issued and state how they were given to you—

A. This is a copy, all right. I am pretty sure we have the original which was mailed to San Francisco.

Q. That original was sent to Nye & Nissen, San Francisco? A. That's right.

Q. Look at the other—there are two of them.

A. Yes, these are copies of the Terminal Refrigerating Company.

Q. One of them is—— A. 95.

Q. 95 cases, and one for 10 cases.

(Testimony of Frank Gartenberg.)

A. That's right.

Q. Again referring to this Exhibit 124, signed "Nye & Nissen, by D. Weinstein," that is an order to the Terminal Refrigerating Company to deliver these 105 cases of eggs, Lot 3737, to the California Freight Service, is it not? A. That's right.

Q. For shipment to San Francisco, is that right?

A. That right.

Q. Were these 105 cases then taken out in pursuance of your order? A. That's right.

Q. And sent to San Francisco, is that right?

A. San Francisco. The truck picked them up at the storage house and delivered them to San Francisco.

Q. After these 105 cases of Lot 3737 had left Los Angeles, was [1884] that fact reflected by your daily report to San Francisco? A. Right.

Q. How was it reflected?

A. It was reported on the daily report, lot so and so, so many cases, shipped to San Francisco via the name of the truck company.

Q. During the period from the time the eggs were put in storage there in February and the time they were taken out about the 14th of October, did you have any conversation with Mr. Moncharsh or anyone else from the San Francisco office in regard to this particular lot of eggs?

A. I don't remember whether I had a conversation or not.

Q. During that period did Mr. Moncharsh ever

(Testimony of Frank Gartenberg.)

come to Los Angeles and visit the office there that you were operating? A. Yes.

Q. How frequently did he come there?

A. Not very frequently. He must have been there several times.

Q. He was there several times during that period? A. That's right.

Q. When he came what discussion was had, in general between you?

Mr. Faulkner: We object——

A. Well, generally——

Mr. Faulkner: Just a moment, please, Mr. Witness—as incompetent, irrelevant, and immaterial, and not within the issues in this case.

The Court: It is too general. Fix the time for the conversation and the place.

Mr. Pratt: Well, the witness said he came on a number of occasions. I am asking him what conversations or discussions [1885] were had on these several visits, if they were had on the subject of the conversation between them. I am not asking for any conversation.

The Court: Having to do with what?

Mr. Pratt: Having to do with these—with the business of the company, and this particular lot of eggs that were in storage there.

The Court: Q. State whether or not you had any conversation with him in relation to this particular lot of eggs?

A. I can't remember, sir.

Mr. Pratt: Q. After these eggs, this lot 3737,

(Testimony of Frank Gartenberg.)

was sent to San Francisco, when did the matter of those eggs, or any portion of them, come to your attention? A. Sometime in——

Mr. Faulkner: We will object to that. Just a moment. We object to that as calling for the opinion and conclusion of the witness, that they were the same eggs; and assuming something not in evidence.

Mr. Pratt: I will reframe the question.

Q. When, if at all, did you have any conversation with Mr. Moncharsh in regard to certain eggs on the steamship W. S. Clark at Long Beach?

A. It was sometime in November. I don't remember the exact date. He called me on the phone.

Q. What did he say?

A. He told me to go down——

Mr. Faulkner: The same objection, your Honor; hearsay as to the defendants. [1886]

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: He told me to go to the William S. Clark, which is docked at Long Beach, and see what the trouble is over there.

Mr. Pratt: Q. Trouble with what?

A. See if it was our merchandise, the exact words he put it—"They are having trouble, you go over there and see what it is, see if it is our merchandise."

Q. What further was said?

A. Nothing more.

(Testimony of Frank Gartenberg.)

Q. Was anything said about reporting on the subject?

A. Yes; he said, "Report the findings to me."

Q. Do you remember the date when that telephone conversation occurred?

A. Well, it was—I don't remember the date, but it was the afternoon previous of me going over there. I don't remember exactly when the date was.

Q. Previous to your going where?

A. Going to the William S. Clark. I went there in the morning. This was in the afternoon——

Q. One afternoon he called you on the telephone?

A. That's right.

Q. The next morning you went to——

A. I went to Long Beach.

Q. To Long Beach? A. That's right.

Q. And with whom did you go?

A. I started out by myself and it was the usual procedure, we always went and used to stop at the Terminal. In the morning, you see several of the fellows, buyers, prospective customers usually congregate there. It was a regular habit of mine to stop at the Terminal. Mr. Abell was there. I mentioned to him, "I am going to Long Beach to check on some eggs." He said he was going out there, that he was going to Long Beach to call on the various dealers, and I suggested that instead of using two cars I said, "Let's go in one car." The fact I didn't have a light with me——

Q. A candling light?

A. A candling light—that was one reason that

(Testimony of Frank Gartenberg.)

morning particularly that I stopped at the Terminal. I was going to get one of the candling lamps that they use for inspections.

Q. Did Mr. Abell have a candling lamp in his car? A. Yes.

Mr. Faulkner: He did not finish.

Mr. Pratt: Q. Did you finish your answer?

A. Yes, I finished it.

Q. Mr. Abel had a candling lamp?

A. Yes.

Q. Did you go in his car or yours?

A. We went in his car.

Q. When you got to the vessel at Long Beach with Mr. Abell, what did you do?

A. When we got to the boat we were met by the little short fellow supposed to have been the steward. He was quite excited and worked up and talked to me like I was the one who boiled the eggs for him. I kind of calmed him down a little bit. I said. "That's what I am here for, I want to see what the trouble it." So I proceeded with him into the kitchen, and they had several bowls of eggs there, and he was telling me, and verifying it with the cook, that they had to break out 900 eggs——

Mr. Faulkner: The conversation with the steward is not admissible against the defendants.

Mr. Pratt: Eliminate the conversation. What did you do with these eggs in the kitchen, with these loose eggs?

A. Those were the loose eggs taken out of the cases that they were using, and I thought in fairness

(Testimony of Frank Gartenberg.)

to making an inspection and verifying what I found was not to look at those eggs that he had laying there open. So I went down in the cooler with Mr. Abell. We went down there and we examined the eggs that were standing there, that is, we looked at them, they were all piled up to one side——

Q. You mean the cases of eggs in the cooler?

A. Yes. When I walked in there I saw the lot number 3737 on all these cases. I remarked, "That is a familiar number——"

Mr. Faulkner: The conversation with whom?

The Court: It may go out. Just state what you did.

Mr. Pratt: Q. How many cases were there in the chill box?

A. There must have been 45 cases; anywhere between 40 and 45.

Q. These loose eggs that were in the kitchen, did you examine those before you went down to the chill box?

A. Yes, we looked at that pile, but we didn't want to dig into them too much, because we wanted to see the original cases. [1889]

Q. And those cases of eggs in the kitchen, did you examine them?

A. We just looked at a couple of handfuls.

Q. With the light? A. Yes.

Q. What did you observe as to those eggs?

A. There were some rotten ones in there and shrunken ones.

Q. You are familiar with the grades of eggs?

(Testimony of Frank Gartenberg.)

A. Yes.

Q. How did those eggs grade?

A. The eggs didn't grade that were inedible, but the eggs that were edible were grade B and C, and some Checks.

Q. Then you went down, as you have said, down to the chill box. How many cases of eggs did you examine down there?

A. I took out three. I brought them upstairs.

Q. Three cases? A. Three cases.

Q. Was Mr. Abell with you? A. Yes.

Q. Who carried the eggs up?

A. Well, we each grabbed a case and carried it up.

Q. There was a third case? A. Yes.

Q. Who carried that one up?

A. The steward.

Q. Where did you have your candling light located?

A. We had the light there in the kitchen, on the side where there was, I believe, a vegetable table.

Q. How many of these three cases, how many eggs did you examine with the candling light?

A. I candled those three halves.

Q. Three halves? A. Yes.

Q. What did you observe in regard to those three half cases? [1890]

A. Three half cases contained from 1½ to 2½ dozen rots in each half case.

Q. What kind of rots?

A. Well, some were black rots, some were just

(Testimony of Frank Gartenberg.)

spotted, molded on the inside. The majority of them were real bad rots.

Q. After you had examined those three cases, did you go back to the chill box?

A. We went back there to check the temperature.

Q. What did you find about the temperature?

A. The temperature was 38 at the time.

Q. What was the condition of the chill box?

A. The condition was all right.

Q. At this same time did you examine any butter?

A. Yes.

Q. How much butter was included in the chill box, butter of Nye & Nissen origin?

A. Well, the shipment, I believe, was either a thousand or twelve hundred pounds.

Q. Did you examine that butter?

A. Yes.

Q. How many packages or boxes of butter did you examine?

A. Well, they had—we just checked on two different packages of butter. Then he had some butter on the table that he was ready to set for the officers of the ship. I checked that.

Q. With what result did you conclude as to the condition of that butter?

A. Well, some of it was pretty rancid and there was one package that was not so very bad.

Q. You say some of it was pretty rancid?

A. Yes. [1891]

Q. What do you mean by that, Mr. Gartenberg?

A. It was sweet butter.

(Testimony of Frank Gartenberg.)

Q. Unsalted butter?

A. Unsalted butter, and it was rancid. It had a funny taste.

Q. How did you examine the butter?

A. By tasting it.

Q. Were any packages of butter marked with any identifying mark?

A. I don't remember whether they were in plain wrappers or labels of Nye & Nissen. I don't remember, because they were brought in—I think it was unwrapped.

Q. Brought in by whom?

A. By the steward. [1891-a]

Q. Brought in by whom?

A. By the steward.

Q. Now, in examining these eggs there on the boat were you able to determine whether those eggs had been processed? A. Yes, sir.

Q. Had they been processed? A. No, sir.

Q. They were plain eggs, were they?

A. They were plain eggs.

Q. Were you able to determine from your examination of the eggs whether they had been candled since they had been placed in storage at a previous time?

A. Well, handling eggs as long as I have, I was able to see very clearly that the eggs had not been candled, and these were the original eggs that I shipped to San Francisco.

Q. How did you conclude that these eggs had not been candled since they came out of storage?

(Testimony of Frank Gartenberg.)

A. First by the condition of the cases, the marks, the lot numbers, the material that the eggs were packed in. If eggs have been recandled it is generally to the advantage of the eggs to put them in a dry good material. This material was the original, because they were soft, wet from the storage.

Q. When you say the material you mean the flats and fillers?

A. The flats and fillers that the eggs are packed in.

Q. The external appearance of the eggs, had that anything to do with your judgment?

A. Yes, sir.

Q. And what was that appearance?

A. Well, there was a lot of fuzz on the cases, and you could tell by having handled those eggs once, you can tell whether they have been rehandled again.

Q. Was there anything about the eggs themselves as you determined their condition which indicated that they had not been candled since they were placed in storage previously?

A. Well, it was evident that the eggs had not been candled containing that amount of rots, and the rest were of a grade which is only fit for baking, or Grade B and C, and a lot of checks in there. They certainly would put them in if they were not candled.

Mr. Faulkner: We submit that is an argument and not testimony.

Mr. Pratt: He is testifying as an expert.

Mr. Faulkner: I will ask that it go out.

(Testimony of Frank Gartenberg.)

The Court: The question and answer will stand. The objection will be overruled.

Mr. Pratt: Q. How long were you there in your examination of the eggs and butter on that occasion?

A. Well, I spent there all morning.

Q. A morning?

A. I believe it was way into the noon hour before I got through.

A. After you got through your examination of these eggs and butter, what did you then do, Mr. Gartenberg?

A. I assured the steward that I was going to report—call San Francisco immediately and have those eggs and butter replaced.

Mr. Faulkner: We ask that that go out as hearsay, your [1893] Honor.

Mr. Pratt: If the Court please, he was acting in behalf of this company. He was the manager of their office at Los Angeles, and I believe it is perfectly proper for him to detail what occurred.

Mr. Faulkner: The conversation between Mr. Gartenberg and the steward on the ship is hearsay as to the defendants.

The Court: Read the question and answer.

(Record read.)

The Court: What he assured him may go out, and the Jury disregard that. Develop the facts, whatever they may be.

Mr. Pratt: Q. What did you then do?

A. I got the phone and I called the Los Angeles office.

(Testimony of Frank Gartenberg.)

Q. You called from Long Beach, didn't you?

A. From Long Beach.

Q. To whom did you talk?

A. I talked to Dora Weinstein and I told her to get——

Mr. Faulkner: Just a moment. The conversation between Mrs. Weinstein and this witness is hearsay as to the defendants. They are not parties to this case, your Honor, not in the presence of the defendants.

Mr. Pratt: Dora Weinstein was the employee at that office employed by the defendant Moncharsh.

Mr. Faulkner: That is right, but that does not make the conversations between employees binding upon the defendants in the case. [1894]

Mr. Pratt: Very well, I will withdraw the question.

Q. What then occurred? What did you do? You say you called Mrs. Weinstein on the telephone. Is that right?

A. I told her to call——

Q. No, not what you told her.

The Court: What was done?

Mr. Pratt: Q. You called her on the telephone, is that right? A. That is right.

Q. What did you then do?

A. I want to tell you just exactly what I said.

The Court: Q. What did you yourself do?

A. I couldn't call San Francisco from there, so I asked her to call San Francisco and tell Mr. Moncharsh what happened here; to immediately ship

(Testimony of Frank Gartenberg.)

forty—twelve hundred pounds of butter and forty-five cases of eggs immediately as the ship had to have the eggs and butter to leave the next day.

The Court: I will allow the question and answer to stand. Proceed.

Mr. Faulkner: I did not hear the entire answer.

(The last answer was read.)

Mr. Pratt: Q. Then where did you go? You then returned——

A. Then I returned to the office.

Q. What time did you ge to the office, do you remember?

A. It was some time in the afternoon, about three o'clock, I believe. [1895]

Q. Do you know whether on the next day a shipment of eggs and butter came from San Francisco to the boat? A. Yes, sir.

Q. Did you have any conversation then with Mr. Moncharsh directly over the telephone in regard to those eggs?

A. Well, the only conversation I had with Mr. Moncharsh that next morning was when I found out that the eggs had been seized by the State.

Q. You mean the eggs that had been on the boat?

A. The eggs that had been on the boat had been seized by the State and the truckman that delivered the replacement from San Francisco could not pick those eggs up, so when they called the office I in turn called Mr. Moncharsh.

Q. What conversation did you then have with Mr. Moncharsh?

(Testimony of Frank Gartenberg.)

A. I told him at the time that I would have to put up a bond. The requirements were if we put up a bond we can get those eggs released to our warehouse and rework them.

Q. To your warehouse in Los Angeles?

A. In Los Angeles.

Q. And what did he say?

A. He said, "Go ahead." And that was taken care of.

Q. Then these eggs were in fact taken to the Nye & Nissen warehouse and reworked, as you call it? A. That is right.

Q. And by that you mean recandled, do you not?

A. Recandled.

Q. And who did that work?

A. I had an egg candler at the time, and myself.

Q. Did you examine the entire truckload of eggs?

A. We [1896] candled the entire lot.

Q. And these are the eggs that had been on the boat that were taken off the boat and brought by truck to Los Angeles in your warehouse, is that right? A. That is right.

Q. What was the result of your candling of these eggs, if you remember?

A. Well, I am not sure of the exact amount, but I think there were a hundred and sixty to a hundred and eighty dozen of rots dumped.

Q. You dumped them where?

A. At the city incinerator.

(Testimony of Frank Gartenberg.)

Q. And then the rest of the eggs, were they graded?

A. No, sir. They had no grade because they were all bakers—Grade B and C and checks.

Q. What was done with those eggs?

A. They were released to us and we sold them.

Q. And then you shipped them?

A. I don't remember whether we sold them in Los Angeles or shipped them to San Francisco. Generally we were ordered to ship all the under grades to San Francisco.

Q. And you spoke of them as "bakers."?

A. That is right.

Q. What do you mean by that?

A. I mean a lower grade of eggs, eggs that had shrunken half to a grade, we call them trades.

Q. They can be used by bakers; is that it?

A. They can be used by bakers. There is a certain amount of eggs left.

Q. After these eggs had gone back to San Francisco or had been [1897] disposed of there in Los Angeles, did you report this matter to Mr. Moncharsh? A. I believe I have.

Q. In what manner?

A. Well, I must have——

Q. In writing?

A. I must have made a report to him in writing on the findings of those eggs.

Q. Will you look at this paper? This is a paper which you yourself produced, is it not?

A. Yes, sir.

(Testimony of Frank Gartenberg.)

Q. Is that a copy of the report that you made to Mr. Moncharsh in accordance with his request?

A. Yes, sir.

Q. And it was made when?

A. November 3.

Q. 1943? A. 1943.

Mr. Pratt: I should like to offer this in evidence, if the Court please.

Mr. Faulkner: May I see it?

The Court: Let it be admitted and marked.

Mr. Faulkner: Would your Honor withhold a ruling until I look at it?

The Court: Very well.

Mr. Pratt: Is this admitted, your Honor?

The Court: Let it be admitted.

Mr. Faulkner: We object to it as hearsay as to the remaining defendants, not binding upon them; a statement of this witness, who is not a co-conspirator, is not binding upon the remaining defendants.

The Court: The objection will be overruled.

Mr. Faulkner: In other words, this is the report of a man who is not on trial, your Honor, in writing. He has testified to everything he did.

Mr. Pratt: He made a written report of it.

Mr. Faulkner: And he claims he made a report. That is his statement.

The Court: I will allow it in evidence.

Mr. Faulkner: Exception.

Mr. Pratt: Q. Mr. Gartenberg, how was this report sent to Mr. Moncharsh?

(Testimony of Frank Gartenberg.)

A. It was either sent separately in the mail or it was put in the overnight or with all the papers.

Q. That is, you made a daily report?

A. A daily report.

Q. And it may have gone like that?

A. That is right.

Mr. Pratt: I would like to read this to the Jury:

"Memorandum. Nye & Nissen, Inc. November 3, 1943.

"To A. Moncharsh from Frank.

"Dear Abe:

"I spent all morning at the harbor checking on the eggs and butter delivered to the W. S. Clark at San Francisco. I found the butter a bit rancid and some of it was O.K., but the eggs, I have candled three half-cases and found them to be from one and a half to two and a half dozen loss to the half case, and the good eggs were nothing but standards and trades. These eggs are part of the 105 cases that were shipped to you on [1899] October 14, Lot 3737, stored at the Terminal. They had not been candled and they were in the original cases, and the lot numbers stamped right on the cases. The steward of the ship was very much excited about the kind of eggs he got and stated that he certainly was glad that he was detained at Long Beach Harbor, which will give him a chance to change the eggs and butter. He also stated to me that he saw the same butter and eggs on another ship which had left the harbor yesterday morning and that they had the

(Testimony of Frank Gartenberg.)

same trouble. They had to break out nine hundred eggs to get five hundred. He told me that he had called in the Army and Navy inspectors and also a civilian inspector in Long Beach, who was along with the veterinarian. He did not know whether he was a state or a county man. And they have all told him that these eggs were under grade eggs and had considerable loss in them and were not fit for them to go to sea.

"Abe, you certainly should check in on this and see whose error it was to ship that kind of merchandise on a seagoing vessel, as after all these boys who are going out on these boats are risking their lives for us at home, and we certainly should see that they get the right kind of food, especially when they are paying for it. The butter and eggs were both kept under refrigeration, under a temperature of 38. The engineer of the ship made his [1900] report to that effect, and the steward said that he is making out a full report to the company.

Signed: FRANK."

Q. Now, referring again to the cases of eggs that you looked at on the hold of the ship, you have said some of them were marked 3737. Do you know how many of those cases had that mark on them?

A. Well, they had a lot of their merchandise stacked in there around the eggs, but the first—the front of the stack were all stamped 3737.

Q. Now, you saw all those cases again the next day at your warehouse in Los Angeles, did you not?

(Testimony of Frank Gartenberg.)

A. In Los Angeles, that is right.

Q. And can you state from looking at the rest of the cases how they were marked?

A. They were marked with the same lot number.

Q. 3737?

A. That is right, most all of them.

Q. All of them, did you say?

A. That is right.

Mr. Pratt: You may cross-examine. [1901]

Mr. Pratt: I have no further questions.

Cross Examination

Mr. Faulkner: Q. Mr. Gartenberg, I understand that in the year 1943 you have recollection of the quantity of eggs coming into Los Angeles?

A. I can't hear you so well.

Q. Pardon me? A. I don't hear so good.

The Court: Raise your voice.

Mr. Faulkner: Q. In the year 1943 you remember certain eggs coming into Los Angeles, is that right? A. 1943?

Q. Yes. A. Yes.

Q. About how many cases of eggs did you receive in Los Angeles in January of 1943, Mr. Gartenberg, that went into storage?

A. I don't remember. There were quite a few receipts at that time of the year.

Q. What were the numbers of the cases, Mr. Gartenberg, on these various cases that went into storage in January, 1943?

A. I don't remember the exact amount, but there were a few cars.

(Testimony of Frank Gartenberg.)

Q. What were the lot numbers assigned to the cases by the icehouses that went into storage in January, 1943?

A. The different lot numbers?

Q. Yes. A. I don't remember.

Q. You do recall, however, that a carload of eggs came in sometime in January, 1943, which went into the Terminal Refrigerating Company?

A. Yes.

Q. How many cases of eggs—how many carloads of eggs went [1902] into the Terminal warehouse from Nye & Nissen in January or February, 1943?

A. There were several cars.

Q. Do you remember the quality, the type of eggs involved in all of those cars?

A. Well, they were practically all the same type of eggs which come from Minnesota, and I believe, I am not sure, I believe there were some eggs from Wisconsin which had been purchased by Nye & Nissen that came in during that time.

Q. When a carload of eggs arrived in Los Angeles and went into storage did you make a report to the San Francisco office about those eggs being received?

A. Well, that was the usual procedure.

Q. Was it your usual procedure to candle the eggs? A. To inspect them.

Q. Candle them? A. That's right.

Q. You did that on all occasions, did you?

A. We took a sample out of every car.

Q. I mean on all occasions when you put eggs

(Testimony of Frank Gartenberg.)

into storage you took samples out of every car and candled them?

A. With the exception of the eggs that came from San Francisco, which was their own pack, why, we never checked on them when they went into storage, but any eggs purchased from anyone, when they would come into the storage house I would check on them as to quality and condition and make a report on them.

Q. You would make a report?

A. That's right. [1903]

Q. In that report you would indicate the quality of the eggs?

A. I would tell them just what I found at the time.

Q. That report was in writing, was it not?

A. What?

Q. The report that you made was in writing?

A. At times it was in writing, and other times it was verbally.

Q. All the reports concerning the receipt of eggs that went into storage in Los Angeles were always made in writing, were they not?

A. Not always.

Q. When you made the report in writing you would indicate the quality of the eggs?

A. That's right.

Q. And if you had candled them you would indicate the quality? A. That's right.

Q. Then what would you do with the report?

A. What would I do with the report?

(Testimony of Frank Gartenberg.)

Q. Yes.

A. It would be either put in the mail or—I mean it would go in the mail to San Francisco.

Q. In the year 1943 how many cases of eggs arrived from Minnesota that went into the storage plant of the Terminal Refrigerating Company about the early part of February, do you remember?

A. No, I don't.

Q. Do you remember distinctly a carload of 560 cases of eggs coming into the Terminal Warehouse in early February, 1946?

Mr. Pratt: 1946?

Mr. Faulkner: 1943.

A. Well, there was quite a few cars at the time that had been delayed en route. [1904]

Q. Do you remember that particular carload of 560 eggs? A. 560 cases?

Q. Yes.

A. Yes, I believe I do. I believe there was one car with 560 cases.

Q. What type eggs were they?

A. If it is the one I remember, they were Minnesota eggs.

Q. What?

A. I believe they were Minnesota eggs.

Q. Yes, and what type of eggs?

A. They were large and mediums.

Q. Where did you first see the particular carload of eggs that you think you remember of 560 cases, at the railroad siding, or in the Terminal warehouse? A. That was in the Terminal.

(Testimony of Frank Gartenberg.)

Q. In the Terminal?

A. The cars were always spotted on the Terminal dock.

Q. How many of the 560 cases did you examine?

A. Well, it was customary, these cases would be unloaded——.

Mr. Faulkner: I withdraw the question.

Q. How many did you actually examine of these cases, the 560 cases of eggs arriving at the Terminal Warehouse in early February of 1943?

A. I can't tell you exactly this particular car, but it was my customary way of checking the quality and condition of eggs to take about 10 per cent.

Q. Would that be about 60 cases?

A. Well, depending on the quality of the eggs. If the eggs on the first sample, you know the pack, you know the grade, where they come from, you check on a few cars and you find them all to be uniform, the grade is about what you are supposed to get, you naturally don't go any further. Of course, you go beyond that if you find the eggs to be different from what you are supposed to have.

Q. What is the minimum number of cases that you examined in the early part of February on any carload of 560 cases of eggs which came into the Terminal Warehouse in early February, 1943?

A. I don't know. I have checked on a lot of eggs that came in. There was a lot of eggs at that time.

Q. You don't remember what the minimum would be? A. I don't remember.

(Testimony of Frank Gartenberg.)

Q. But the maximum would be about 10 per cent? A. That would be about it.

Q. You opened 10 per cent of the cases, and if you examined them you would examine them with a candle? A. Yes.

Q. And you would examine about half of a case?

A. Generally you would check, if you want to get a grade we would candle them and grade them separately as to each grade and determine the grade and get a grade for them, but I if just checked on them for my own knowledge for quality and condition I didn't grade them; I just candled them and in my own mind I could see whether they were to grade or not.

Q. Do you remember this carload of 560 cases of eggs that went into the plant of the Terminal Warehouse Company in early February, 1943, whether you checked those eggs to determine [1906] quality or whether you checked them to determine the grade?

A. I don't remember. I checked a lot of eggs at that time.

Q. As I understand, those eggs you attempted to sell right after they came in?

A. That's right.

Q. Whom did you attempt to sell them to?

Mr. Pratt: Well, which eggs are you referring to?

Mr. Faulkner: 560 cases of eggs that came in from some place, or other, to the Terminal Warehouse in early February, 1943.

(Testimony of Frank Gartenberg.)

A. I always offered the eggs to other dealers.

Q. Well, what other dealers did you offer these eggs to, what were the names of the dealers?

A. I can't tell you the names. There were a lot of dealers there.

Q. Give me the name of one person to whom you offered these eggs.

A. I can't recall who I offered them to at the time.

Q. How did you describe the eggs when you offered them to the dealers?

A. How would I describe the eggs?

Q. Yes. What kind of eggs did you believe you had for sale? A. Fresh eggs, Minnesota.

Q. Fresh eggs, Minnesota. About when did you offer these particular eggs to a dealer in February of 1943, what part of the month?

A. I don't remember.

Q. How many dealers did you offer them to?

A. I can't remember that.

Q. Did any dealer inspect the eggs?

A. I imagine some of them looked at them.

Q. In order for any dealer to look at the eggs they had to take the covers off, didn't they?

A. Surely.

Q. About how many dealers do you think went down to inspect the eggs?

A. I don't remember whether I had one dealer at the time, or one customer, or several customers. It was customary at the Terminal Warehouse to sort of use it as an auction place, like. Dealers

(Testimony of Frank Gartenberg.)

would get together, they knew eggs were coming in, and we were always on the job, and whoever was there would say, "Well, I have a car of eggs from Minnesota, if you need some I want to you to look at them." That's the way we done business. Sometimes they were interested and other times they were not.

Q. When there was a carload of 560 cases of eggs, about how many cases of eggs would a particular dealer look at?

A. Well, ordinarily it will depend whose eggs they looked at. If they looked at the Poultry Producers' pack, or the Draper pack, which is a regular pack of eggs, the grade is known to everyone, they don't look at every case. They generally know, they generally take their word for it, because they know it packs regular. In my case I had many difficulties as to the sale of our grade of eggs.

Q. What was the customary number of cases that a dealer that you were dealing with would look at, in connection with an examination of eggs that he was interested in buying?

A. Well, not a definite amount. Some dealers would be more critical, they would look at a few more if they didn't trust you [1908] and they were afraid they were getting something different, they would look at more.

Q. Five per cent?

A. Sometimes at more than 5 per cent, some would look at less, some more.

Q. You have no recollection of the number of

(Testimony of Frank Gartenberg.)

dealers that you exhibited these eggs to other than that it may have been one or may have been several?

A. I don't recall. I may have not had any more than one customer who was interested to look at those eggs.

Q. On your direct examination, Mr. Gartenberg, you without any hesitation said that you offered those eggs to different people and you couldn't sell them.

A. That was after the eggs were in storage, sir.

Q. I am talking about before the eggs were in storage, when they came into the Terminal Warehouse you told Mr. Pratt you offered these eggs for sale and you couldn't sell them.

Mr. Pratt: I object to that. The eggs that I was talking about were 105 cases.

Mr. Faulkner: We have to get to the 105 cases, your Honor, by taking care of particular quantities that came here.

Mr. Pratt: The question related to his efforts to sell these eggs that were in storage under lot No. 3737.

Mr. Faulkner: I will submit the record, your Honor. It is as clear as could be. Mr. Pratt asked the question if before the eggs went into storage, whether the eggs were offered for [1909] sale, and whether he could sell them.

The Court: Well, we will ask the direct question of the witness.

Q. Do you recall these No. 3737 eggs, whom they were offered to for sale?

(Testimony of Frank Gartenberg.)

A. Lot 3737, 105 cases of mediums, I remember they were offered during the time they were in storage; I don't remember to whom, but to some dealer. I wanted to sell them; that was my regular duty.

Mr. Faulkner: Q. Did you ever offer any of the eggs in lot 3737 for sale at the time there were fresh eggs in storage? A. I believe I have.

Q. Who were the dealers?

A. I can't recall.

Q. How many dealers?

A. I don't remember.

Q. At what time did you offer them?

A. I don't remember the time.

Q. In respect to the time you first saw them.

A. When the eggs came in, naturally.

Q. When they came in. It was at the time that these eggs went into the warehouse, into the Terminal warehouse, at the time of their arrival in Los Angeles, that you made your inspection?

A. What was that question?

Mr. Faulkner: I will withdraw it in that form.

Q. In other words, these eggs came by railroad into Los Angeles, is that correct?

A. That's right.

Q. They were unloaded at the Terminal warehouse? A. That's right. [1910]

Q. Isn't that correct? A. Yes.

Q. When they were unloaded at the Terminal warehouse that would be the delivery of the eggs, would it not? A. That's right.

(Testimony of Frank Gartenberg.)

Q. Was that the time that you inspected them?

A. That's right.

Q. So that the inspection you testified to on your direct examination was an inspection of these eggs at the time of delivery, at or about the time of delivery from the railroad company, on the one hand, to the icehouse, on the other; isn't that correct?

A. That's right. They delivered them right to the icehouse.

Q. Then how many days after you were advised by either the railroad company or the icehouse that the eggs were there would you go around and inspect them?

A. Well, I always had advance information as to the cars on the way, when we could expect them to arrive, and the traffic man at the storage house checked for me to be sure to notify me the minute the car is to be spotted, so I could get at them.

Q. Then you would go down?

A. Then I would be there.

Q. You would be there, and you would then inspect them? A. That's right.

Q. The inspection you have spoken of in this court room, at the time of the delivery of the eggs, would be almost simultaneous with the delivery——

A. You mean with the arrival.

Q. Yes.

A. The arrival of the eggs, the inspection would take place right after the car was spotted and opened up. [1911]

(Testimony of Frank Gartenberg.)

Q. Yes. A. That's right.

Q. In other words, a day would be about the latitude that you would allow between the spotting of the car at the siding of the warehouse and the inspection?

A. Well, we didn't have to worry about the warehouse. As soon as it was delivered to the storage company, they had sufficient bonds, even if we had to get the warehouse receipt from our bank, they always guaranteed to let us go into the car.

Q. When I say warehouse, I think they call it icehouse, the Terminal Warehouse Company, don't they?

A. Terminal Refrigerating Company is the name.

Q. In other words, it would be at the time of the arrival of the eggs at the Terminal Refrigerating Company that you would make your inspection?

A. That I would make my inspection and offer some of the merchandise for sale.

Q. Pardon?

A. I would make my inspection if I wanted to sell those eggs, and I would offer them to the various dealers who happened to be there, ask them if they wanted any of them.

Q. After the arrival of the eggs which you spoke of and your inspection, you would then make a report to the San Francisco office of Nye & Nissen?

A. That evening, at the end of the day, the report would go out, and sometimes the next day.

Q. Do you recall——

(Testimony of Frank Gartenberg.)

Mr. Pratt: Did you finish your answer?

The Witness: Yes. [1912]

Mr. Faulkner: Q. Do you recall a quantity of eggs coming into Los Angeles that went to the National Ice & Cold Storage Company in the month of January, 1943? A. A carload of eggs?

Q. Yes.

A. I recall, yes, carload of butter and eggs in the same car.

Q. How many cars or parts of cars of eggs went into the National Ice & Cold Storage Company that belonged to Nye & Nissen, in January, 1943?

A. I can't remember. There were lots of eggs at that time, lots of eggs.

Q. That was the time for storing eggs?

A. Yes. It was not exactly the time for storing eggs, but there was a condition at that time where there was a flood, I think, somewhere en route, and a lot of eggs had been delayed and they all came in about the same time. There were lots of eggs.

Q. Were eggs plentiful or scarce in February, 1943?

A. They were scarce until these cars, until these bridges were fixed and all these cars came in at the same time, so there was plenty of eggs at that time.

Q. I would like you to give me an idea of the quantity of eggs stored in the National Ice & Cold Storage Company in the months of January and February, 1943, in case amounts?

A. How many cases?

Q. Yes.

(Testimony of Frank Gartenberg.)

A. I can't tell without referring to the "overnight" that we sent.

Q. You have no memory on the subject, at all?

A. I know there [1913] was lots of eggs, but I can't tell you the exact amount.

Q. You mean lots of cases of eggs?

A. Lots of cases of eggs, a lot of cars.

Q. A carload of eggs runs around 550 to 600 cases of eggs?

A. Well, generally from 400 to 600.

Q. Would you say that in the months of January and February, 1943, that there were more or less than a thousand cases of eggs stored in the National Ice & Cold Storage Company and the Terminal Refrigerating Company for the account of Nye & Nissen?

A. I can't tell you the amount that was stored at the Terminal.

Q. I am combining them both.

A. I don't remember just how many.

Q. Would you say that in the period of January and February, 1943, that 2500 cases of eggs were stored for the account of Nye & Nissen in those two refrigerating plants?

A. Possibly. I know there were lots of eggs. I don't remember——

Q. Would there be 5000 cases?

A. I don't think so. I don't remember the amount of eggs that were stored.

Q. Do you remember, Mr. Gartenberg, do you

(Testimony of Frank Gartenberg.)

know which particular car of eggs—I will withdraw that.

You became familiar later with a lot number of eggs called 3737 in the plant of the Terminal Refrigerating Company, is that right?

A. That's right.

Q. How many cases of eggs were in that lot?

A. In that lot [1914] was 105 cases.

Q. You recall that. How do you recall that?

A. Because there was mediums; they were mediums, different sizes of eggs, and there was only 105 cases.

Q. How do you remember the number of cases of eggs?

A. I remember it because it was a very definite number; it is easy to remember, for one, and the fact I stored a short lot of eggs.

Q. Were those the only cases of medium eggs stored in Los Angeles County for the account of Nye & Nissen in January and February, 1943?

A. They were the only lot I stored that came out of those two cars.

Q. What two cars?

A. One car that came direct to the National, and one came to the Terminal Refrigerating Company.

Q. This car that came to the National, how would you describe the car?

A. There was one car that came to the National Ice & Cold Storage Company that contained both brown eggs, white eggs, large and 80 cases of

(Testimony of Frank Gartenberg.)

medium eggs. When we store the eggs we store them according to the size or grade. We store them according to size or we store them according to the grade. Naturally, there were large eggs and there were medium eggs. I separated the mediums and put them into a separate lot of mediums, and the large into a lot of large eggs. [1915]

Q. What was the number of the lot for the large eggs, Mr. Gartenberg?

A. I don't remember, possibly a number near 3737, either before or after.

Q. That would be obvious, any number given to it, whether it was one or seven million, it would be either above or below 3737, wouldn't it?

A. They way they loaded these eggs was according to the way they received them. If they unloaded a carload of eggs, they gave it the number 3737, it went into storage, and the next carload of eggs after that was 3738.

Q. I am asking your recollection of the lot number assigned to the large eggs that you separated and made into a lot number at or about the time that you made a lot number for these medium eggs?

A. I don't remember the lot number for the large eggs.

Q. Do you remember seeing those cases, the large eggs that you separated? A. Sure.

Q. Do you remember reading the number on the cases?

A. Reading what number? The lot number?

(Testimony of Frank Gartenberg.)

Q. Was the lot number placed on the cases?

A. No, I had not reason, after they went into storage, I had no reason to see the number or recollect what lot they were in. They were recorded on my overnight sheet which I had a copy of.

Q. And you had a copy of the overnight sheet for all of the eggs, did you not?

A. That is right.

Q. The only one that you remember the number of, however, is [1916] lot 3737, isn't it?

A. That is right.

Q. And that is because the numbers duplicated themselves, is it not?

A. No, because I had more contact with that lot than any other.

Q. That was at a subsequent time, wasn't it?

The contact with the numbers was at a subsequent time, wasn't it?

A. The contact with the lot was when I started them at first, and then when I was ordered to ship them to San Francisco; the next contact I had with them was when I got on board the boat I saw the same lot number, the same cases.

Q. You saw the same cases; you saw similar cases on the boat?

A. The same cases and the same eggs.

Q. Pardon me?

A. I saw the same cases and the same eggs that I stored in February.

Q. Mr. Gartenberg, during the period from February to October in 1943 did you sell eggs that were

(Testimony of Frank Gartenberg.)

in storage in Los Angeles in either the National Ice Company or the Terminal Refrigerating Company?

A. I believe I have. I don't recall. There wasn't always—I couldn't always sell the eggs in storage, when I—generally it was ordered to try to sell certain lots of eggs. Other lots were ordered held.

Q. Mr. Gartenberg, did you withdraw eggs from storage during the period from February to October?

A. I don't remember for sure, but I believe I have.

Q. Now, some time in October of 1943 a direction was given, [1917] as I understand, to—I think it is Exhibit 124—you would state that that was a direction to transfer certain eggs in the Terminal Refrigerating Company to some carrier company, is that right?

A. A truck company. This was the order written out. This was the usual procedure.

Q. By Mrs. Weinstein?

A. Mrs. Weinstein.

Q. You note the date on that, Mr. Gartenberg, or maybe you won't?

A. I don't know what date is on there.

Q. I don't see a date on there. Do you happen to?

A. Well, at various times they didn't have to put the date on because the truck driver went right to the storage company got those eggs. The storage

(Testimony of Frank Gartenberg.)

company had telephone orders already to withdraw those eggs.

Q. At all events, Mr. Gartenberg, the first step of the withdrawal of the eggs would be a direction from the owner of the eggs, isn't that right?

A. That is right.

Q. Did you receive any directions in writing to withdraw those eggs from anyone in San Francisco?

A. I don't recall whether it was by telephone, teletype or by mail, but I know that I was ordered to withdraw those eggs and ship them to San Francisco.

Q. When you say teletype—I assume everyone knows, your Honors, but it will become part of this case—what is a teletype?

A. A teletype machine—I believe it is a telegraph. You type your message right there and the one that has a [1918] teletype in their office—we call a number just like you call a number on the phone, and the operator would get that number of the teletype and they receive a message. Instead of talking you type the words.

Q. In other words, Mr. Gartenberg, a call is placed in through this electrical instrument calling a particular place? A. That is right.

Q. When they respond then you typewrite a message? A. A message, that is right.

Q. And then the other party answers?

A. That is right.

(Testimony of Frank Gartenberg.)

Q. And when each side has finished you have practically a completed conversation; a conversation, but in actuality it is recorded conversation, isn't that about what it is? A. That is right.

Q. You had a teletype that was used in the firm of Nye & Nissen? A. Yes sir.

Q. And you communicated with San Francisco on that? A. That is right.

Q. And they communicated with you, did they not? A. At various times, yes.

Q. And when matters were teletyped to Los Angeles that related to matters that you were handling, would they be called to your attention?

A. Yes.

Q. In the regular course of the work that you were doing you would receive that San Francisco teletype message, is that [1919] correct?

A. That is right.

Q. Do you recall whether, either in writing or on telephone or on teletype, a request was made of you to give a report to San Francisco of the quantities of eggs that you had in Los Angeles at or about a short time before October 14, 1943?

A. That I was asked to make a report of?

Q. Asked to indicate to the San Francisco office the quantity of eggs that were in your control down in Los Angeles?

A. I don't recall—they knew what we had in Los Angeles.

Q. Do you recall shortly before a direction was

(Testimony of Frank Gartenberg.)

made to the Terminal Refrigerating Company to send these eggs to a carrier whether a request was made of you to give a report of the quantity of eggs, and after you had indicated in substance the quantity of eggs that you had there, that you were then requested to send the eggs in the Terminal Refrigerating Company to San Francisco?

A. I don't recall it.

Q. At all events, you do recall that you did get a request from San Francisco to send the eggs?

A. To ship the eggs, that is right.

Q. Do you remember who made the request?

A. I am pretty sure it was Mr. Moncharsh, because everything pertaining to eggs, he is the one who handled it.

Q. At all events, in connection with that transaction your memory is exhausted when you have testified that a request did come, and that it came from Mr. Moncharsh, and then a direction [1920] went to the Terminal Company to deliver the eggs to a carrier, is that right? A. That is right.

Q. Now, did you observe the loading of the carrier? A. No sir.

Q. But the eggs presumably got to San Francisco? A. Yes.

Q. Do you recall about when it was that they left Los Angeles?

A. I believe it was October—the middle of October, either the 14th or 15th.

Q. Now, the box numbers, the numbers on the

(Testimony of Frank Gartenberg.)

boxes that you saw in that refrigerator plant bore the number 3737, am I correct in that?

A. That is right.

Q. Then later you were on board the ship William Clark, is that right? A. That is right.

Q. Did you get a direction from anyone in San Francisco to go aboard that ship?

A. That is right, I did.

Q. And who gave you the direction?

A. Mr. Moncharsh.

Q. Was it in a letter, a teletype or a telephone?

A. I think it was a telephone.

Q. You are not certain, are you?

A. I am not certain.

Q. Do you recall when it was?

A. Well, according to my report of November 3, which was the day after—it must have been about November 1 or 2.

Q. This teletype machine that we have been talking about operates on a principle, does it not, in which there is a piece of yellow paper, somewhat similar to the one I hold in my hand, and when a message is transmitted over it, after they have concluded it, someone says "Okeh, end:" isn't that the usual method of concluding it?

A. That is right.

Q. And then the girl tears it off?

A. Yes.

Q. I will show you this paper and ask you if you recognize that as a counterpart received in Los

(Testimony of Frank Gartenberg.)

Angeles of a teletype message in relation to the William Clark? A. In a lot of cases——

Q. I just asked you to look at it and tell me if you can recognize it as a counterpart of a message that you examined in the regular course of business relating to the William Clark?

A. Yes, this is a teletype message.

Q. Pardon me?

A. This is a teletype message from San Francisco to the Los Angeles office.

Mr. Faulkner: I offer this in evidence, your Honor.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit AL.)

Mr. Faulkner: Q. When it appears, Mr. Gartenberg, "OPR calling LA 434", what does that mean? Withdraw that. When on the teletype sheet you see the words "OPR calling LA 434," does that mean that the operator is calling Los Angeles 434?

A. That is right.

Q. Then when you see the word, "OK", does that mean that you have taken up the call?

A. That is right. That is the teletype we have in the office. [1922]

Q. Then when it says, "434 OK, trying to get them, LA operator," and then it says, "What report, please?" "DA"—what would that mean?

A. Don't answer.

Q. What?

(Testimony of Frank Gartenberg.)

A. "DA" is don't answer, or didn't answer. That is a conversation between the operators.

Q. Then it says, "OK, will call you. OPR SF 325". A. Yes sir.

Q. It says, "On your call to LA 434 there is no one to accept call for a few min."

A. A few minutes.

Q. Is there an operator there? And then it says "Min. LA 434, OK." That evidently is some colloquy between the operators of the machines trying to establish a contact, is that right?

A. That is right. The San Francisco operator was trying to contact 434 in Los Angeles. No one answered the teletype, so she reports back to the San Francisco office.

Q. And then it says, "Is this LA 434. No Min SF Pls". A. Please—what was that first?

Q. "No Min SF," and then "Pls" means please, doesn't it?

A. No, misinformed, please, misinformation or something. And then our operator answered, "This is LA 434," and the conversation opened.

Q. This was the conversation: "Delivered at San Francisco to Steam William S. Clark 45 cases fresh medium eggs and 1200 pounds butter. This boat is at present at Berth 155 Wilmingto—?" that means Wilmington? A. Wilmingfon.

Q. "Have Frank examine the eggs and butter and find out what is [1923] wrong. You can see Mr. Prevost in regard to making inspection. Make

(Testimony of Frank Gartenberg.)

sure that the eggs and butter are ours." And then the message says "End". A. End.

Q. And the response comes, "OK, End." and then comes, "OK, End." again.

A. That is right.

Q. Isn't that the first intimation to you that there was any problem concerning butter and eggs on the Clark? A. That is right.

Q. Now, you received that message on or about November 1, was it not?

A. That was about the first according to that date on there.

Q. Well, it is a practice in the office for the operator, whoever it may be, to indicate the date of these messages from day to day, isn't that correct?

A. Yes, when she would get through with the message she would date it.

Q. When she would get through with the message she would date it before she would tear it off the sheet.

Q. Is that how they did it in Los Angeles?

A. That is right.

Q. Now then, that call that I have just read to you, for instance, will be charged to the firm of Nye & Nissen by the telephone company, isn't that correct? A. I imagine they will charge.

Q. I mean they keep a record of the calls and they base charges upon it?

A. I guess so. I guess that is the way they charge, according to the time. [1924]

(Testimony of Frank Gartenberg.)

Q. After that message was called to your attention, whether it was on the 1st or on the 2nd, you then went out to the William Clark, did you?

A. No, I believe—I was not present when this—since now I am getting this thing a little clearer. I didn't remember whether it was a telephone message or a teletype message, but I know I remembered I was told to go over there and make an inspection. This was on an afternoon and the next, the following morning, it was too late to go there that afternoon so on the following morning I went upto Long Beach to the William S. Clark.

Q. I understood, Mr. Gartenberg, that you went up on the 3rd of November.

A. Well, if it was on the 3rd of November then this message was on the 2nd, because I went the next morning.

Q. If this message was the first you then went on November 2nd?

A. Then I must have gone November 2nd.

Q. And on November 2nd or 3rd, whichever the day may be, you went out from some point in Los Angeles to the Terminal Refrigerating plant and you got a ride with a man named Abell?

A. That is right.

Q. At the time you were going out to the William Clark to examine butter and eggs you indicated to Mr. Abell what you were going out there for, didn't you? A. That is right.

Q. And you knew at that time that Mr. Abell was an inspector of the United States Department of Agriculture? A. Sure, I did.

(Testimony of Frank Gartenberg.)

Q. And you also knew that he had an egg candling device, and you thought you could get the use of it, is that right? A. That is right.

Q. And you asked him to bring it along?

A. No, he always had it with him in his car.

Q. Did you know when you invited him to go out there that you were going to get a ride in his car? A. No.

Q. Did you have a car——

A. I had mentioned to him that I was going to Long Beach.

Q. What?

A. When I met him at the terminal I told him, "I am [1925] going to Long Beach."

Q. Yes.

A. At that time I didn't mention what I was going to Long Beach for, or anything else.

Q. Did you have a car?

A. I had a car, yes.

Q. But you left yours and went in his?

A. That is right.

Q. And when you got out there you got on the ship William Clark? A. That is right.

Q. At that time when you went on that ship with Mr. Abell you came in contact with the steward and then you observed some eggs in a bowl, and then you got three cases of eggs and brought them up and candled some of them, isn't that correct? A. That is right.

Q. And Mr. Abell, did he candle any of them?

A. He candled some of the eggs that were—some

(Testimony of Frank Gartenberg.)

in the case and some in these bowls, a great big wash basin.

Q. At that time the steward, whoever he was—I think you told his Honor he was quite excited about the——

A. Yes, they were all pretty much excited, the cooks and the steward.

Q. When you got through with the work you did you left the ship, is that correct?

A. That is right.

Q. When did you go back to the ship?

A. When did I go back?

Q. Yes, when did you go back to the William Clark? A. I didn't go back.

Q. You said that you sent this domucent, here, 137, that you prepared it?

A. This one, here?

Q. What date did you prepare it on? I say what date did you [1926] prepare it on?

A. That I prepared this?

Q. Yes.

A. I want to read it. I don't see no date. Oh, yes, November 3rd.

Q. Do you remember that you prepared it on November 3rd?

A. That is right. I did not recognize this message.

Q. Did you type it, yourself? A. No, sir.

Q. Who typed it? A. Dora Weinstein.

Q. Dora Weinstein? A. That is right.

Q. And who mailed it?

(Testimony of Frank Gartenberg.)

A. Dora Weinstein.

Q. And who signed it?

A. It is very seldom I signed my name to any of these. I would tell her what to write, she would write it out and type my name in there. Sometimes I would sign my name to it.

Q. Pardon me?

A. Sometimes I would sign my name to the message and other times she would just type it in.

Q. You nearly always signed your name, didn't you? A. Not always.

Q. Wouldn't you say that 90 per cent of the times that you sent a message to San Francisco you signed it?

A. No, I wouldn't say. I couldn't say exactly what percentage. But I know sometimes I didn't sign them. They were typed.

Q. It was prepared after you left the William Clark? A. That is right.

Q. When did you come in contact with these eggs again after you left the William Clark on the occasion of your visit with [1927] Mr. Abell?

A. When the eggs were brought in by Mr. Wirth in the truck.

Q. In the truck.

A. He followed the truck from the dock to the warehouse.

Q. He told you he followed the truck?

A. What is that?

Q. Did you drive the truck? A. No, sir.

Q. I mean Mr. Wirth told you he followed it?

(Testimony of Frank Gartenberg.)

A. Mr. Wirth is a state inspector. He followed the truckman that picked up these eggs to deliver them to our warehouse. He followed them to make sure that they arrived safely.

Q. Is this the only report that you made in connection with your work on the William Clark, or in connection with these eggs, at or about November 3?

A. Is this the only report?

Q. Yes.

A. One other message—I wouldn't say a report—was when I got through with the inspection at the William S. Clark; I called the office and told Mrs. Dora Weinstein to contact San Francisco on the teletype or by phone and tell Abe Moncharsh to ship immediately the eggs and butter to replace the bad ones.

Q. I ask you if you recognize that as a teletype in an exchange of communications between the Los Angeles office and San Francisco on the subject of the William S. Clark?

A. That is not my message. I did not send this message?

Q. Do you recognize that as a teletype, a counterpart of a teletype that was kept in the firm of Nye & Nissen in Los [1928] Angeles in the month of November, 1944?

A. Well, from the evidence, this message, it must have come from Los Angeles. It is a message between Peter Rice, who is an attorney which we had contacted in regard to the bond and the eggs released so we could re-handle them.

(Testimony of Frank Gartenberg.)

Q. There is no question that that relates to the William Clark, at least the lower part?

A. No, there is no question of that. I guess it is perfectly all right.

Q. Is there any question in your mind, Mr. Gartenberg, that is a counterpart of a teletype message between the Los Angeles and the San Francisco office on that subject?

A. I believe it is a message between Los Angeles teletype and San Francisco, dictated or spoken by Peter Rice and Dora Weinstein.

Mr. Faulkner: I offer it in evidence, your Honor.

The Court: In any event, it is time to adjourn. The jury may be excused until 10 o'clock tomorrow morning.

(An adjournment was taken until tomorrow, Thursday, February 28, 1946, at 10:00 o'clock a.m.) [1929]

Thursday, February 28, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen; on trial.

The Court: Waive the roll call, stipulating and agreeing all the jurors are present and seated in the box. You may proceed.

FRANK GARTENBERG,

recalled;

Cross-Examination (resumed)

Mr. Faulkner: At the last session I offered this teletype in evidence.

(Testimony of Frank Gartenberg.)

Mr. Pratt: If the Court please, before the court rules on this I should like to ask the witness several questions in regard to this message.

The Court: Very well. No objection?

Mr. Faulkner: No objection.

Mr. Pratt: Q. Mr. Gartenberg, I believe you stated yesterday that you were not present when this teletype was sent from the Los Angeles office of your company to the San Francisco office.

A. That's right.

Q. This purports to be a message from Peter Rice—and Peter Rice, your have testified, was the attorney there in Los Angeles——

Mr. Faulkner: Mr. Pratt, it does not purport to be a message from Peter Rice, only in part. In other words, the message from Peter Rice is the first paragraph. Then this is the [1930] conversation on the teletype.

Mr. Pratt: It does not so appear.

Mr. Faulkner: Well, it does in fact, from the context and the paragraph.

Mr. Pratt: Q. Did you know anything about this teletype message, yourself?

A. No, I did not.

Q. Until yesterday? A. Until yesterday.

Q. You knew nothing about it, you were not present when it was sent? A. No.

Q. As far as Peter Rice is concerned, you have said he was the attorney down there in Los Angeles. A. That's right.

Q. For Nye & Nissen. Had you contacted him

(Testimony of Frank Gartenberg.)

in connection with this matter of the eggs on the steamship Clark?

A. I did not, personally, but Dora Weinstein contacted him after we received instructions from San Francisco to do that.

Q. Did you receive those instruction from San Francisco, yourself, personally?

A. I don't remember whether I received them or they just came into the teletype, came in in a teletype form to the office.

Q. What was the occasion for calling in Peter Rice?

Mr. Faulkner: That is not an examination on the document, your Honor.

The Court: I understand he is trying to lay the foundation for the admission of the document.

Mr. Pratt: That is all. [1931]

Mr. Faulkner: Yes, but he is talking about getting in touch with a lawyer.

Mr. Pratt: This is a message from the lawyer.

The Court: He is trying to lay the foundation for its admissibility.

Mr. Faulkner: He is trying to lay a foundation for its inadmissibility, I assume.

The Court: Proceed. Read the question.

(Question read.)

Mr. Faulkner: That wouldn't relate to the authenticity of this document.

The Court: I am not prepared to say whether it does, or not. I will allow the question.

A. The reason we contacted Peter Rice was for

(Testimony of Frank Gattenberg.)

the purpose of getting a release of those eggs which were seized by the State.

Mr. Pratt: Q. Do you know whether Peter Rice had any direct telephone communication with Mr. Moncharsh in that connection?

A. Yes; Mr. Rice told me he had contacted Mr. Moncharsh by phone, and that he was trying to get the eggs released.

Mr. Faulkner: That is hearsay as to the defendants, a statement from Mr. Rice. It has nothing to do with this paper.

Mr. Pratt: It has quite a little to do with the paper, I think. [1932]

Mr. Faulkner: It is still hearsay, your Honor, the conversation with this man and Mr. Rice.

Mr. Pratt: I don't care about the conversation or for any evidence of the conversation that Peter Rice had with Mr. Moncharsh.

Mr. Faulkner: If Mr. Pratt is taking the position that that is not an admissible document, he can make the objection and I won't press it on the present state of the record. If there is any question in the mind of the Government lawyers that that is an authentic communication that was passed from the office to this man, he was the manager of that——

Mr. Pratt: My contention in connection with this document from the present state of the record is that this is a message from Peter Rice, the attorney, by teletype, in Los Angeles, to San Francisco. In order to make it admissible it must be authenti-

(Testimony of Frank Gartenberg.)

cated by the testimony of this attorney, Peter Rice. It is not sufficiently authenticated at this time to make it admissible evidence, and I object to it for that reason. If you are going to withhold it—

Mr. Faulkner: No. I will now develop, in the light of your objection, a foundation for its admissibility. May I then lay a further foundation?

The Court: You may.

Mr. Faulkner: Q. Mr. Gartenberg, you told us yesterday that a means of communication between the Los Angeles office of [1933] Nye & Nissen and the San Francisco office was, among other things, by teletype.

A. Teletype, telephone, or by letter.

Q. And that teletypes in relation to matters in which you were handling were passed in review by you, whether you did the actual teletyping or not?

A. Not necessarily.

Q. I will ask you, Mr. Gartenberg, to look at this paper and tell me whether you saw the Los Angeles counterpart if that paper at or about the time that you were handling the eggs that were on the William Clark.

A. I did not see that message.

Q. Look at it.

A. I didn't see the message.

Q. Did you give the context of this message, other than the first paragraph, to Dora Weinstein?

A. No.

Q. Was it your practice to give to Dora Weinstein messages to send by the teletype?

(Testimony of Frank Gartenberg.)

A. At certain times I have; other times she had the authority to send her own messages and handle her own converations with San Francisco.

Q. You were in charge of the matter in Los Angeles, of the eggs on the William Clark, were you not? A. That's right.

Q. Did you, at or about the 4th of November, advise Mrs. Weinstein to send a message to San Francisco in substance and effect stating that in your opinion——

The Court: Just a moment.

Mr. Faulkner: The simplest——

Mr. Pratt: I object to the reading of the——

Mr. Faulkner: I am asking if he directed Mrs. Weinstein to send a message in a particular form.

Mr. Pratt: As long as you don't read the form I don't object, but I suggest you hand the paper to the witness, rather than to read it now. I object.

Mr. Faulkner: The position of the Government is that this message that went from Los Angeles to San Francisco, that this witness had nothing to do with it. That is obviously their position. It would be admissible on either the basis that it was his message, or a message from the place which he would identify as a part of their records.

The Court: So I may follow you, the purpose of your examination now is to lay a foundation by interrogating this witness for the admissibility of that document?

(Testimony of Frank Gartenberg.)

Mr. Faulkner: Yes. Either through this witness or through——

The Court: Well, proceed to do that. It is not necessary to unfold the contents of the document.

Mr. Faulkner: Yes, your Honor, because if they still maintain that position then we will bring the witness up here who will establish that the substance of this document was given to that witness who sat down at a typewriting machine and sent it over a teletype.

The Court: Proceed.

Mr. Faulkner: Q. Did you not, on or about the 4th of November, either personally at the teletype machine, yourself, or [1935] by dictating the substance of that message to Dora Weinstein, advise her to send to San Francisco a message which had been received from Mr. Rice?

A. I don't remember this teletype nor giving the message to Dora. I knew that there was conversation between Dora Weinstein and Peter Rice and Abe Moncharsh.

Q. Was there any discussion with Peter Rice?

A. Nothing except asking him what he had done about releasing the eggs. We were anxious to get the eggs worked on.

Q. Yes.

A. He said he phoned Mr. Moncharsh in San Francisco and he was working with the Attorney General with regard to releasing the eggs.

Q. Did you advise the San Francisco office, either personally, or did you ask Dora Weinstein

(Testimony of Frank Gartenberg.)

to send a message to San Francisco that these eggs had to be re-candled within twenty-four hours, and that all inedibles had to be thrown out?

Mr. Pratt: I object to reading the message.

Mr. Faulkner: I am entitled to show he either sat at a machine and did it, himself, of he directed a message be sent to San Francisco, advising San Francisco that these eggs had to be candled within twenty-four hours.

The Court: Objection sustained.

Mr. Faulkner: Q. Did you on or about November 4, 1943, request any employee at the firm of Nye & Nissen to send a message to San Francisco advising San Francisco that the eggs [1936] involved in the William Clark were to be candled within 24 hours?

A. That was knowledge in the office that that was the instruction from the State Department, and in the summons that directed us that we would have to work the eggs out within 24 hours, and Dora Weinstein knew that.

Q. Did you advise her to send a message to that effect to San Francisco?

A. I don't remember.

Q. Did you advise Mrs. Weinstein to state to San Francisco that you believed that the simplest method would be to candle the eggs in Los Angeles?

A. Well, it was not mine. That was the instruction of the State inspector, that they desired to candle them there, not to release them to San Francisco and lose track of those eggs.

(Testimony of Frank Gartenberg.)

Q. Did you advise Dora Weinstein to send a message, or, rather, did you advise Dora Weinstein on or about November 4, 1943, in substance and effect that you believed the President Lines should do their own re-candling.

A. I did not.

Q. Or that your company do it for the American President Lines as a courtesy?

Mr. Pratt: I object to this and to counsel reading the wording of this teletype. The court has already ruled, I believe, that it is improper. I object to it.

The Court: The objection will have to be sustained.

Mr. Faulkner: Your Honor, a man has said that he did not cause—— [1937]

The Court: Regardless of what he said, the purpose of this examination is to lay a foundation for the admissibility of the document. Limit yourself to that inquiry. Let the record show you take an exception.

Mr. Faulkner: I except to that ruling, and I now desire to examine the witness as to whether or not he gave certain instructions in that office relating to the William Clark, apart from this message. I will ask him in that connection if he gave instructions to anyone in the firm of Nye & Nissen in which he requested that a record of any kind be sent to San Francisco advising them that in his opinion the American President Lines should bear the cost of re-candling the eggs.

(Testimony of Frank Gartenberg.)

The Court: You may answer.

The Witness: A. I did not, because I felt the American President Lines were not responsible for the condition of those eggs. I felt that at the time I inspected them.

Mr. Faulkner: Q. Did you at any time, on or about November 4th, request that a communication of any kind be sent to San Francisco, to have San Francisco determine whether or not the eggs should be re-candled, or whether to fight, whether a fight should be made in connection with any proceedings pending?

A. I don't remember sending any message of any kind to that effect.

Q. Did you receive an answer to your inquiry, any inquiries that were sent from San Francisco in which you were advised in [1938] substance and effect that the eggs——

Mr. Pratt: I object.

Mr. Faulkner (Continuing): ——should be re-candled in Los Angeles, and that the American President Lines were very good customers of Nye & Nissen and that no effort should be made to resist them, and that every effort should be made to re-candle the eggs with as little loss as possible?

Mr. Pratt: I object.

Mr. Faulkner: Q. Did you receive, in the regular course of your business, a message from San Francisco in any form to that effect?

Mr. Pratt: I object to this.

The Court: Objection sustained.

(Testimony of Frank Gartenberg.)

Mr. Faulkner: Your Honor, this has nothing to do with the foundation of that document.

The Court: The court has ruled. I don't wish to discuss it further.

Mr. Faulkner: Exception.

Q. Did you receive an instruction on November 4, 1943, from San Francisco, to return the eggs, the good eggs, after re-candling, to San Francisco?

Mr. Pratt: I would like to inquire whether or not these questions are for the purpose of forming a basis for the introduction of this document, or whether counsel has abandoned that and gone on to something else. [1939]

Mr. Faulkner: I have not abandoned that, I am asking the question as part of the cross-examination of this witness.

Mr. Pratt: I take it it has nothing to do with the admissibility of the document.

Mr. Faulkner: Then you take it wrong.

Mr. Pratt: Then I object to it.

Mr. Faulkner: I submit the question.

The Court: Objection sustained.

Mr. Faulkner: Exception.

Q. Did you at any time, Mr. Gartenberg, ask the American President Lines to take the responsibility of re-candling the eggs involved in the shipment on the William Clark?

Mr. Pratt: May I ask whether this is on the subject of the admissibility of this exhibit?

Mr. Faulkner: I won't answer it, your Honor.

(Testimony of Frank Gartenberg.)

I am asking it as part of the cross-examination of Mr. Gartenberg.

Mr. Pratt: This document has been offered in evidence, and before it is received by the Court I want to be heard further, and I would like to have the question determined by the court before counsel goes on with another line of cross-examination of the witness. If counsel has abandoned the offer of the document at this time then I will not object, but I would like to know.

Mr. Faulkner: Then I will re-offer this document in evidence, your Honor, upon the foundation laid today and the [1940] foundation laid yesterday, in which the witness testified that it was his position as manager to read the teletype messages interchanged between the two offices. As your Honor will remember, when this paper was presented to the witness last night, that the witness gave this testimony:

"Q. I ask you if you recognize that as a teletype in an exchange of communications between the Los Angeles office and San Francisco on the subject of the William S. Clark?

A. That is not my message. I did not send this message.

Q. Do you recognize that as a teletype, a counterpart of a teletype that was kept in the firm of Nye & Nissen in Los Angeles in the month of November, *1944*?

A. Well, from the evidence, this message, it must have come from Los Angeles. It is a message

(Testimony of Frank Gartenberg.)

between Peter Rice, who is an attorney which we had contacted in regard to the bond and the eggs released so we could re-candle them.

Q. There is no question that that relates to the William Clark, at least the lower part?

A. No, there is no question of that. I guess it is perfectly all right.

Q. Is there any question in your mind, Mr. Gartenberg, that is a counterpart of a teletype message between the Los Angeles and the San Francisco office on that subject?

A. I believe it is a message between Los Angeles teletype and San Francisco, dictated or spoken by Peter Rice and Dora Weinstein." [1941]

That is the testimony of the man who was in charge of the office, and who had the records of the department there and observed them at all times, and with that foundation, and with the testimony elicited this morning, I again offer the teletype in evidence. It is submitted to the Court for a ruling.

Mr. Pratt: Now, if the Court please, there is no authentication of this document in the record at this time as evidenced by the testimony that was just read by Mr. Faulkner. Furthermore, it is perfectly clear to me at least that the purpose of the activities of the attorneys at that time was to further the same fraud, not only to cement the fraud which had already been perpetrated, but to extend that fraud by attempting to unload upon the Government of the United States the burden of

(Testimony of Frank Gartenberg.)

re-examining these eggs. Now, there is one thing to which the Government is surely entitled and that is——

Mr. Faulkner: I assign that remark as absolute misconduct and ask the Court to direct the Jury to disregard it.

The Court: I am prepared to rule. Let the Jury disregard that statement. At this time the Court will sustain the objection to the admissibility of this document for the simple reason that there is no difficulty in laying a foundation if there is any question about it. At the present time the Court has ruled that there is not sufficient to allow the document in evidence, and for that reason I will sustain the objection.

Mr. Faulkner: I reoffer the document in evidence upon the [1942] rule of law that was invoked by the Court in admitting documents in evidence from Mr. Mills. He never kept the records——

The Court: But now the Court has ruled. At this time I sustain the objection.

Mr. Faulkner: I wanted to direct your Honor's attention to the basis of a prior ruling which I ask your Honor to invoke to admit this document.

The Court. You have a record now, haven't you?

Mr. Faulkner: I have.

The Court: That is the ruling. Let us proceed.

Mr. Faulkner: Exception. Having in mind the ruling, then, I would like the privilege of asking

(Testimony of Frank Gartenberg.)

the witness these questions to lay a foundation as part of the cross-examination of this witness:

Q. I will ask you if in the month of November 1943 you advised the San Francisco office through a teletype message that you believed the eggs should be recandled in San Francisco and that the burden of recandling should be borne by the American President Lines or that the work should be done as a courtesy for them.

Mr. Pratt: I object to this. Counsel is trying to get this document in by a different method after the Court has ruled that it is not sufficient.

Mr. Faulkner: I will get the document in, but I want to prove as part of the cross-examination of this witness in [1943] connection with that document that the witness has testified falsely in stating that he knows nothing about a message of this type, and I am entitled to lay a foundation in connection with what he did in relation to recandling.

The Court: You may develop what he did if there is any question about it at all. Proceed. Ask the direct question.

The Witness: What was that question again?

(The last question was read.)

A. I don't remember sending that kind of a message. If I had, I just repeated the wishes of the San Francisco office. That is the way they wanted it. But I don't remember telling them that. If I did, it was a repetition of their desire to have me say that, and as far as being manager